



Senate

File No. 782

General Assembly

January Session, 2001

(Reprint of File No. 266)

Substitute Senate Bill No. 1057
As Amended by Senate Amendment
Schedule "A" and House Amendment
Schedule "A"

Approved by the Legislative Commissioner
May 18, 2001

AN ACT CONCERNING BENEFICIARY INTERESTS IN TRUST MATTERS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) As used in sections 1 to 6, inclusive, of this act:
- 2 (1) "Trust matters" means (A) any property or interest in property
3 held as part of a trust; (B) actions by or against a trust or by or against
4 the trustee of such trust, in its capacity as such trustee; (C) proceedings
5 for the interpretation of any document creating a trust or other
6 instrument pursuant to which property is held by a trustee; (D)
7 accountings, whether intermediate or final, of any trustee; and (E) any
8 other matters concerning the administration of a trust. Any reference
9 to a trust in this act shall include both testamentary and
10 nontestamentary trusts.
- 11 (2) "Represent" shall not be construed to permit a person who has
12 not been admitted as an attorney under the provisions of section 51-80
13 of the general statutes to serve as legal counsel for any other person in

14 a trust matter.

15 Sec. 2. (NEW) In connection with trust matters, to the extent there is
16 no conflict of interest between the holder of a power of appointment
17 and the persons represented with respect to the particular question or
18 dispute: (1) The sole holder or all coholders of any power of
19 appointment, whether or not presently exercisable, shall represent the
20 potential appointees; and (2) the sole holder or all coholders of a power
21 of revocation or a general power of appointment, including one in the
22 form of a power of amendment, shall also represent the takers in
23 default of the exercise thereof.

24 Sec. 3. (NEW) In connection with trust matters, to the extent there is
25 no conflict of interest between the representative and the person
26 represented or among those being represented with respect to a
27 particular question or dispute: (1) A court appointed conservator or
28 guardian of the estate may represent and bind the estate that the
29 conservator or guardian controls; (2) a court appointed conservator or
30 guardian of the person may represent and bind the ward if a
31 conservator or guardian of the ward's estate has not been appointed;
32 (3) an agent having authority to do so may represent and bind the
33 principal; (4) a trustee may represent and bind the beneficiaries of the
34 trust; (5) an executor or administrator of a decedent's estate may
35 represent and bind persons interested in the estate; and (6) if a
36 conservator or guardian has not been appointed, a parent may
37 represent and bind the parent's minor or unborn child.

38 Sec. 4. (NEW) In connection with trust matters, unless otherwise
39 represented, a minor, incapacitated or unborn individual, or a person
40 whose identity or location is unknown and not reasonably
41 ascertainable, may be represented by and bound by another person
42 having a substantially identical interest with respect to the particular
43 question or dispute, but only to the extent there is no conflict of
44 interest between the representative and the person being represented.

45 Sec. 5. (NEW) (a) If the court determines that an interest is not

46 represented under sections 2 to 4, inclusive, of this act, or that the
47 otherwise available representation might be inadequate, the court may
48 appoint a guardian ad litem to receive notice, give consent, and
49 otherwise represent, bind and act on behalf of a minor, incapacitated
50 or unborn individual, or a person whose identity or location is
51 unknown. A guardian ad litem may be appointed to represent several
52 persons or interests.

53 (b) A guardian ad litem may act on behalf of the individual
54 represented with respect to any trust matter, whether or not a judicial
55 proceeding is pending.

56 (c) In making decisions in a trust matter, a guardian ad litem may
57 consider general benefit accruing to the living members of the
58 individual's family.

59 Sec. 6. (NEW) (a) Notice to a person who may represent and bind
60 another person under sections 2 to 5, inclusive, of this act, has the same
61 effect as if notice were given directly to the other person.

62 (b) The consent of a person who may represent and bind another
63 person under sections 2 to 5, inclusive, of this act, is binding on the
64 person represented, unless the person represented objects to the
65 representation before the consent would otherwise have become
66 effective.

67 (c) Notwithstanding any provisions of the general statutes, sections
68 2 to 6, inclusive, of this act shall apply to all judicial proceedings and
69 all nonjudicial settlements, agreements or acts pertaining to trust
70 matters.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Probate Court (Judicial Department)

Municipal Impact: None

Explanation**State Impact:**

The bill as amended specifies the authority of the court to appoint a single representative or guardian ad litem in instances where it is determined that multiple individuals have substantially identical interests in trust matters. These individuals may include minority, incapacitated, unborn, and unidentified persons. Generally, the responsibility for payment of these representatives, when the representative is not a parent or relative, falls on the estate or trust at issue. While the bill as amended clarifies various definitions relating to trust matters and representation issues, it is not anticipated that passage would result in any fiscal impact to the probate court system.

Senate "A" and House "A" make technical and clarifying changes and would result in no additional fiscal impact.

OLR Amended Bill Analysis

sSB 1057 (amended by Senate "A" and House "A")*

AN ACT CONCERNING BENEFICIARY INTERESTS IN FIDUCIARY MATTERS.**SUMMARY:**

Under current law, in proceedings involving trusts and trustees' fiscal affairs, courts appoint a guardian ad litem to represent the interests of unborn, minor, or incompetent people in order to bind them to the outcome of the proceedings. (A guardian ad litem is a person, often an attorney, the court appoints to represent someone's interest during a legal proceeding.)

In the trust matters it covers the bill authorizes, and in some cases requires, people to represent the interests of and bind a minor, an incapacitated or unborn person, or someone whose identity or location is unknown and not reasonably ascertainable if: (1) they have a substantially identical interest with respect to the particular question or dispute and (2) there is no conflict of interest between the representative and the person being represented.

The bill specifies circumstances under which these people's interests can be represented by conservators, guardians, agents, trustees, executors, administrators, and parents.

Under the bill, notice to a person's representative has the same effect as notice to the person himself. The representative's consent is binding on the represented person unless the person objects before the consent would otherwise have become effective.

The bill allows a court to appoint a guardian ad litem to represent a minor, incapacitated or unborn person, or someone whose identity or location is unknown if it determines that his interest is not represented or that the representation may be inadequate. It allows a guardian ad litem to (1) act on behalf of the person represented concerning any trust-related matter the bill covers, whether or not a judicial proceeding is pending, and (2) consider general benefits accruing to

the living members of an individual's family when making decisions. The bill continues to authorize the court to appoint a guardian ad litem to represent several people or interests.

The bill specifies that it does not authorize someone who is not a licensed attorney to serve as legal counsel.

*Senate Amendment "A" makes it clear that the bill's scope is limited to trust matters as defined in its provisions.

*House Amendment "A" makes a technical change.

EFFECTIVE DATE: October 1, 2001

TRUST MATTERS

The bill covers the following trust-related matters:

1. any property or property interest held in trust,
2. legal proceedings against or by a trust or by or against the trustee,
3. proceedings to interpret any document creating a trust or other instrument under which a trustee holds property,
4. accountings of any trustee, and
5. any matters concerning the administration of a trust.

The bill applies to all judicial proceedings and all nonjudicial settlements, agreements, or acts related to these trust matters.

CONSERVATORS, GUARDIANS, AGENTS, TRUSTEES, EXECUTORS, AND PARENTS

With respect to trust-related matters, under certain circumstances, the bill authorizes:

1. a court-appointed conservator or guardian of the estate to represent and bind the estate he controls;
2. a court-appointed conservator or guardian of the person to

represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

3. an agent, with authority to do so, to represent and bind the principal;
4. a trustee to represent and bind the trust's beneficiaries;
5. an executor or administrator of a decedent's estate to represent and bind people interested in the estate; and
6. a parent to represent and bind his minor or unborn child unless a guardian has been appointed for the child.

It appears that current law already authorizes these representations.

The bill grants the representation authority only to the extent there is no conflict of interest either between the representative and the person represented or among those represented concerning a particular question or dispute.

POWER OF APPOINTMENT

The bill requires the sole holder or all co-holders of any power of appointment, whether or not they can currently exercise the power, to represent potential appointees. It also requires the sole holder or all co-holders of a power of revocation or a general power of appointment to represent those who obtain property when the holder does not exercise the power. These requirements only apply to the extent (1) there is no conflict of interest between the holder of a power of appointment and (2) the people represented and they are not otherwise represented.

BACKGROUND

Power of Appointment

A power of appointment is the authority a property owner (donor) gives to someone (donee) to designate or reappoint the person or people who are to receive the property upon the donor's or donee's death of the donor or donee, or at some other time.

Authority to Appoint Guardian ad Litem

The law authorizes the Superior or Probate Court to appoint a guardian ad litem for any minor, incompetent, undetermined, or unborn person in any matter before it if it appears to the court that they have or may have an interest in the proceeding. The appointment is not mandatory but is within the court's sound discretion. The law allows the court to appoint one guardian for two or more people.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0